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No. 01-1229

IN THE

Supreme Court of the United States

PIERCE COUNTY,

Petitioner,

v.

IGNACIO GUILLEN, as Legal Guardian for JENNIFER GUILLEN and ALMA GUILLEN, minors; and MARIONO GUILLEN, as Legal Guardian of PAULINA GUILLEN,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Supreme Court of Washington

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF OF *AMICUS CURIAE* INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION IN SUPPORT OF PETITIONER

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MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAS* SUPPORTING PETITIONER PIERCE COUNTY

Pursuant to this Court's Rule 37.3(b), of this Court, this *amicus curiae* respectfully moves this Court for leave to file the attached brief *amicus curiae* in support of the Petitioner. A letter of consent from the Petitioner to the filing of this brief has been filed with the Clerk. However, consent was not obtained from the Respondents.

IMLA is a nonprofit, nonpartisan professional organization consisting of more than 1,400 members. The membership is comprised of local government entities, including cities and counties, and subdivisions thereof, as represented by their chief legal officers; state municipal leagues; and individual attorneys who represent municipalities, counties, and other local government entities. IMLA, previously known as the National Institute of Municipal Law Officers, has provided services and educational programs to local governments and their attorneys since 1935. IMLA is the oldest and largest association of attorneys representing United States municipalities, counties, and special districts.

Since its establishment, IMLA advocates for the rights and privileges of local governments, and the attorneys who represent them, through its Legal Advocacy Program. Specifically, the Legal Advocacy Program of IMLA serves the membership by advocating the nationwide interests, positions, and views of local governments on legal issues. IMLA has appeared as an amicus curiae on behalf of its members before the United States Supreme Court, in the United States Courts of Appeals, and in state supreme and appellate courts.

IMLA's specific interest in this case lies in the impact the case below has on governments throughout Washington State and the Nation as a whole. Over 39,000 local governments (counties, towns and municipalities) exists in the United States. Many of these entities have some form of policing responsibility, including responding to accident scenes and preparing accident reports. Many of these entities also are responsible for maintaining some part of the 3.9 million miles of highways and roads in the United States. The Supreme Court of Washington's decision allowing the discovery and admissibility of accident reports, and related materials, used to identify hazardous roadway locations effectively creates a situation of *per se* liability on behalf of local governments.

IMLA, as an organization promoting legal issues on behalf of local governments, therefore, files this brief on behalf of its members nationwide.

Respectfully submitted,

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March 27, 2002

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BRIEF OF *AMICUS CURIAE* INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION IN SUPPORT OF PETITIONER

INTEREST OF *AMICUS CURIAE*

The interest of the International Municipal Lawyers Association ("IMLA"), as amicus curiae, is set forth in the motion accompanying this brief.[1]

[1] Pursuant to this Court's Rule 37.6, the amicus curiae represents that this brief was not authored in whole or in part by counsel for any party,

SUMMARY OF THE ARGUMENT

The Washington Supreme Court erred when is held that Congress acted outside its authority in passing 23 § 409. This ruling has potentially severe consequences on local governments in Washington State, and throughout the Nation as a whole.

ARGUMENT

This matter centers on the proper interpretation and constitutionality of 23 U.S.C. § 409. The Respondents alleged that Pierce County was aware of hazardous traffic conditions which contributed to their accidents and did nothing to rectify the conditions. The Supreme Court of Washington determined that 23 U.S.C. § 409 makes state and local accident material and data (which are collected in an effort to rectify dangerous road conditions and to obtain federal funding) non-discoverable and inadmissable in state and federal court proceedings. *Guillen v. Pierce County*, 31 P.3d 628, 647 (2001). The court further held that Congress violated the Tenth Amendment by enacting this statute. *Guillen*, 31 P.3d at 743-4. Therefore, the court ruled that data collected by Pierce County for the purpose of identifying hazardous traffic areas was discoverable and admissible. This ruling by the Supreme Court of Washington was in error and should be reversed.

I. PIERCE COUNTY'S PETITION FOR CERTIORARI SHOULD BE GRANTED BECAUSE THE DECISION OF THE SUPREME COURT OF WASHINGTON CONFLICTS WITH OTHER STATES' COURTS OF LAST RESORT

The Washington Supreme Court held that while the statute

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and that no person or entity other than the amicus curiae, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

was an attempt to preempt state rules regarding discovery and admissibility, Congress was without authority to do so. The court held that the states are not able to ratify Congress' unconstitutional action by participating in the federal highway funds program. The court also held that the Spending Clause, Commerce Clause, and Necessary and Proper Clause did not give Congress the power to interfere with state court procedure. These are contrary to the rulings of the courts of last resort of other States.

For instance, in 1993, the Louisiana Supreme Court held that 23 U.S.C. § 409 preempted conflicting state law. *Wiedeman v. Dixie Elec. Membership Corp.*, 627 So.2d 170, 172 (La. 1993), *cert. denied, Louisiana Dept. of Transp. and Dev. V. Wiedeman*, 511 U.S. 1127 (1994). The court specifically held that the Supremacy Clause provided the vehicle for overriding state law. *Wiedeman*, 627 So.2d at 172.

In ruling on the ability of the federal government to dictate the manner by which states may receive federal funding, the Mississippi Supreme Court also upheld § 409. *Sawyer v. Illinois Cent. Cent. Gulf R.R. Co.*, 606 So.2d 1069 (Miss. 1992). This ruling echoed a similar holding by the Missouri Supreme Court that § 409 was a valid exercise of Congress' power under the Commerce Clause, U.S. Const., art I, § 8, cl. 3). *Claspill v. Missouri Pacific R.R. Co.*, 793 S.W.2d 139 (Mo. 1990).

This conflict among the State regarding an issue of federal law should be resolved by this Court.

II. PIERCE COUNTY'S PETITION FOR CERTIORARI SHOULD BE GRANTED BECAUSE THE WASHINGTON SUPREME COURT HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW WHICH SHOULD BE SETTLED BY THIS COURT

This case presents an important question as to the interpretation of federal law which will affect all local governments in the State of Washington and will likely be relied upon by other jurisdictions to the extent that local governments assert the § 409 privilege.

Interestingly, the Washington Supreme Court recited the history and important purpose behind § 409, yet nonetheless held the statute unconstitutional. The court recognized that § 409 was passed in response to the unexpected consequences of passing § 152 in 1973. Subsequent to passing § 152, which required states to identify public roads that may constitute a danger to the public and rank the most dangerous in writing, private plaintiffs obtained an added advantage in their litigation efforts to prove that local governments had been negligent in designing and maintaining traffic sites. By simply requesting this compiled information, plaintiffs suddenly had a "virtually no-work tool" for use in litigation against local governments. *Guillen*, 31 P.3d. at 717.

In 1987, Congress enacted 23 U.S.C. § 409 and courts tended to interpret the privilege as applying only to reports and surveys which were *specifically created* for the purpose of applying for federal improvement funds. *Guillen*, 31 P.3d. at 717-22. The courts voiced strong objections to the idea that traffic and accident materials were exempt simply because they were *collected* for uses related to a request for funds, especially to the extent that such an interpretation was seen as an attempt by the federal government to regulate the state court systems. *Guillen*, 31 P.3d. at 717-22.

In 1995, Congress disagreed with the limiting interpretation of the state courts and amended § 409 to include "or collected" in the text of the statute. *Guillen*, 31 P.3d. at 723. At the same time, Congress issued a clarification in the Congressional Record, noting that it intended that data collected for safety reports or surveys should not be subject to discovery or admitted in federal or state courts. *Guillen*, 31 P.3d. at 723. "It is intended that raw data collected prior to being made part of any formal or bound report shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location mention[ed] or addressed in such data." H.R. Rep. 104-246 § 328, at 59 (1995).

As can be seen from the Washington Supreme Court's own recitation of the motivation behind § 409, Congress understood the consequences of requiring states and local governments to collect and maintain information regarding hazardous roadways. As of June 1997, there existed in the United States over 3,000 county governments and over 36,000 municipal and township governments. These governments collect a substantial amount of data regarding hazardous, or potentially, road conditions in the United States. These materials are collected for the purposes of improving those conditions in the most timely and economically efficient manner. Litigants should not be allowed to support their claims for monetary damages against local governments based on these materials. To do so would severely burden already overburdened local government finances.

CONCLUSION

For the foregoing reasons, the International Municipal Lawyers Association respectfully requests that this Court grant Pierce County's petition for certiorari.

Respectfully submitted,

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